



# **Missouri Department of Natural Resources**

## **Clean Water Commission Water Protection Program**

### **Meeting Minutes**

**August 4, 2004**

# **MISSOURI CLEAN WATER COMMISSION MEETING**

**August 4, 2004**

**Holiday Inn**

**6921 S. Lindbergh**

**St. Louis, MO**

## **MINUTES**

### Present

Thomas A. Herrmann, Chairman, Missouri Clean Water Commission  
Davis D. Minton, Vice-Chairman, Missouri Clean Water Commission  
William A. Easley, Missouri Clean Water Commission  
Paul E. Hauser, Missouri Clean Water Commission  
Kristin M. Perry, Missouri Clean Water Commission  
Cosette D. Kelly, Missouri Clean Water Commission

Michael Alesandrini, St. Louis RCGA, St. Louis, Missouri  
Andrew Appelbaum, Department of Natural Resources, St. Louis, Missouri  
Michael Bollinger, Ameren, St. Louis, Missouri  
Robert Brundage, Newman, Comley & Ruth, Jefferson City, Missouri  
Alan Callier, Archer Engineering, O'Fallon, Missouri  
Glenn Chatman, Corps of Engineers, St. Louis, Missouri  
Cindy DiStefano, MO Dept. of Conservation, Columbia, Missouri  
Mohsen Dkhili, Department of Natural Resources, Jefferson City, Missouri  
Kirby Finders, Department of Natural Resources, Jefferson City, Missouri  
John Ford, Department of Natural Resources, Jefferson City, Missouri  
Tom Ganz, MO American Water Company, St. Louis, Missouri  
Jack Generaux, US EPA, Kansas City, Kansas  
Peter Goode, Department of Natural Resources, Jefferson City, Missouri  
Scott Goodin, Columbia, Missouri  
Jennifer Harness, Camp, Dresser & McKee, Inc., St. Louis, Missouri  
Bob Hentges, MO Public Utility Alliance, Jefferson City, Missouri  
Tim Hippensteel, Environmental Operations, Inc., St. Louis, Missouri  
Steve Jeffery, Thompson & Coburn, St. Louis, Missouri  
Michael M. Katzman, Kansas City Power & Light, Kansas City, Missouri  
Marlene Kirchner, Department of Natural Resources, Jefferson City, Missouri  
James M. Lanzatami, Doe Run Company, Herculaneum, Missouri  
Mary Lappin, Kansas City Water Services Dept., Kansas City, Missouri  
Richard Laux, Department of Natural Resources, Jefferson City, Missouri  
Larry Levin, Trust for Public Land, St. Louis, Missouri  
John Lodderhose, Metropolitan St. Louis Sewer District, St. Louis, Missouri  
Kevin Mohammadi, Department of Natural Resources, Jefferson City, Missouri  
Stan Murray, Cape Girardeau Soil & Water Conservation Dist., Jackson, Missouri  
Susan Myers, Metropolitan St. Louis Sewer District, St. Louis, Missouri  
Caitlyn Peel, Home Builders Assoc., St. Louis, Missouri  
Kevin Perry, REGFORM, Jefferson City, Missouri

John Pozzo, Ameren, St. Louis, Missouri  
Ken Ressler, Ressler & Assoc., Inc., Ballwin, Missouri  
Phil Schroeder, Department of Natural Resources, Jefferson City, Missouri  
J. D. Schuenemeyer, Department of Natural Resources, Jefferson City, Missouri  
William E. Seffens, St. Louis County Dept. of Health, Clayton, Missouri  
Becky Shannon, Department of Natural Resources, Jefferson City, Missouri  
Tom Siegel, Department of Natural Resources, St. Louis, Missouri  
Cynthia Smith, Department of Natural Resources, Jefferson City, Missouri  
Trent Stober, MEC Water Resources, Columbia, Missouri  
Steve Taylor, Environmental Resources Coalition, Jefferson City, Missouri  
Scott B. Totten, Department of Natural Resources, Jefferson City, Missouri  
Richard J. Tuttle, Alliance Water Resources, Columbia, Missouri  
Bill Winston, Union, Missouri

### **Administrative Matters**

#### Call to Order/Introductions

Chairman Herrmann called the meeting to order at approximately 9:08 a.m. and introduced Commissioners Easley, Perry, Hauser, Kelly, and Minton. Chairman Herrmann then introduced Director of Staff Jim Hull, Assistant Attorney General Amy Randles, and Secretary Marlene Kirchner.

#### Adoption of August 4, 2004 Clean Water Commission (CWC) Minutes

Chairman Herrmann asked if there were any additions or corrections to the minutes. Hearing none, Chairman Herrmann entertained a motion to accept the minutes and enter them into record.

**Commissioner Hauser moved to accept the August 4, 2004 Clean Water Commission minutes. Commissioner Easley seconded the motion. Commissioners Kelly, Perry, and Chairman Herrmann voted yes. Commissioner Minton abstained.**

#### DRAFT Use Attainability Analysis (UAA) Protocol

Prior to Mr. Mohsen Dkhili, Water Quality Monitoring and Assessment, Department of Natural Resources, provided a presentation on the UAA protocol, Chairman Herrmann pointed out in the agenda booklet there is a draft copy titled "Recreational Use Attainability Analysis Guidance," which is what the Commission asked for. The revised draft UAA protocol, which was later sent to the Commission, is titled "Whole Body Contact Recreational Use Attainability Analysis Guidance." Chairman Herrmann stated he would like to go back to the first draft and determine how it got to be whole body contact as opposed to a recreational analysis.

Chairman Herrmann noted that at the last meeting, the Commission changed the boating and canoeing definition to essentially conform with the secondary contact that other states use. There is an ability for a tiered system.

Mr. Jim Hull, Director of the Water Protection Program, Department of Natural Resources, added the definition that Chairman Herrmann had offered has not been officially proposed nor finalized yet. But it does set the stage for discussion during the public comment period on whether or not a tiered approach could be used before the end of the final rulemaking.

The UAA procedure is based upon current regulations, but the results of the UAAs can be used for either approach in the final designation.

Chairman Herrmann stated the department should go back to the recreational use as opposed to the whole body contact use.

Mr. Phil Schroeder, Chief of the Water Quality Monitoring and Assessment Section, Department of Natural Resources, responded that right now the Water Quality Standards don't support a secondary contact or a tiered approach. It was thought that once the department gets through the revisions of the Water Quality Standards, they would have an opportunity to come back and take a look at it, or perhaps even make some changes.

Mr. Schroeder stated another reason the department wanted to focus on whole body contact recreation right now is because they are moving toward designating all classified waters of the state for whole body contact recreation, recognizing the serious need of being able to identify waters that can't support that use as soon as this summer, and to be able to utilize that protocol to revise the water quality standards as appropriate before becoming effective.

Chairman Herrmann stated the direction from the Commission at the last meeting was to change boating and canoeing to the definition, which is in effect, secondary contact. The direction of the Commission is to change the water quality standards. The document contains the criteria for determining what might be secondary contact or boating and canoeing in lieu of whole body contact.

Mr. Hull stated if it's Chairman Herrmann's desire to make that change in the wording, they certainly will. Regardless of the wording of the document, the results of the UAA analysis can be used for the tiered approach if it ends up being in the final rule.

Mr. Schroeder suggested that if the Commission would like for the department to move forward on a protocol for removal of secondary contact use recreation or to assess that, that they do it as a separate document to be able to move ahead with this UAA protocol for whole body contact recreation, but immediately begin the development of a partner document that will look at the secondary side of things with regard to recreational uses.

Chairman Herrmann stated the criteria are already in this document. The direction from the Commission was to follow the Kansas document in producing this document. The first copy did that. The second draft copy has superseded the first copy. It used whole body contact in lieu of recreational use obtainability analysis.

Commissioner Kelly commented she would like to see it stay the same. The Clean Water Act still does say that the waters shall be declared first of all whole body contact.

Chairman Herrmann pointed out that it doesn't. It says fishable and swimmable.

Commissioner Perry stated that if it doesn't have the tiered structure as Kansas says, they have a notice problem to be discussing the issue because the agenda says "...the approach taken by Kansas..."

Chairman Herrmann reported there are 15 use classifications. One of those classifications is boating and canoeing, which there is no definition in the present criteria, there is no assessment of the capability in Table A of the bacteria component of recreation on or in that water. There is not a complete analysis unless you do the UAA. When you do the UAA, then you have someplace to put that stream. It may possibly support secondary contact but it's not capable of supporting whole body contact.

Mr. Schroeder commented the department recognizes that the water quality standards and the 15 categories and uses need some work, particularly in the aspect of secondary contact recreation. Out of one of the 15, there is a poorly defined secondary use definition that begins with the protection of human health resulting from fish consumption. Under that category, the department can currently assign a secondary contact recreational use. It would have to be done on a site specific basis. Following the water quality standards' revision when there is a boating and canoeing definition that embodies the secondary contact recreational issues, they can move it under that title at that point.

Chairman Herrmann replied his argument is if it is done one time with this document, it's the revision, if it doesn't get done in this revision, they wait three more years for the next tri-annual review.

Mr. Schroeder indicated because they are already into a water quality standards revision process, and they are very close to filing something with the Secretary of State's Office, it might be very difficult to get it into this current process. After that rule is in effect, around the summer of 2005, the department will be able to reopen that rule for any further revisions to the water quality standards at that point.

Chairman Herrmann stated, done by rule would require another 9 months to one year. If they do the UAA they could disqualify it, but with EPA's approval, and put in a different category.

Chairman Herrmann asked Mr. Hull if he needed further direction from the Commission to go back to what the draft copy said? Do you want a vote on a direction?

Mr. Hull replied yes. This is a protocol that will be a guidance document on how to do UAAs this summer. The department will also follow up and do this by rule. This will be

embodied in a rule at some point, which is a process that has not been started yet.

Ms. Amy Randles, Commission Counsel, Attorney General's Office, asked staff if they would be prohibited from going forward with the rulemaking at this time if they put the UAA protocol in a separate new rule, if you don't try to amend an existing rule?

Mr. Schroeder said they have no objections to filing a new rule in order to embody UAA protocols.

Mr. Hull stated unless there is something that legally prevents them from doing so, they will go ahead with the proposed rule. Not only the UAA protocol has to be put into rule, but also we will be proposing a rule that will place the detailed 303(d) listing methodology in the rule along with the next 303(d) list.

Chairman Herrmann stated that is fine. The whole body contact recreational use attainability analysis is not to be incorporated in the rule. Ms. Randles' answer to the Commission at the last meeting was that it didn't have to be done by rule. It's protocol and it can be a standard procedure and not incorporated in the rule.

Ms. Randles replied what she said to him was your ability to do that without going through rulemaking depends on how you ultimately use the document. It depends on whether you are going to enforce it like a rule and make people go through the exact steps specified or not, or whether your going to do it on a case by case basis.

Chairman Herrmann further explained it is an evaluative procedure, which includes the final review by EPA before its acceptance.

Mr. Schroeder explained that it's unlike Kansas with respect that it doesn't address the secondary contact aspects of recreational uses, however, it is like Kansas with respect to whole body contact recreational use with one exception, that Kansas has an automatic designation for whole body contact in urbanized areas. Through the stakeholder process there was strong objection from the municipal side that it should be strictly on depth requirements, just like any other waterbody in the state. We agreed with them on that aspect.

Chairman Herrmann added that Kansas' only provision on urbanized streams is the bacterial quality, which is the same as whole body contact.

Commissioner Perry asked why there are two versions?

Mr. Schroeder explained the stakeholders had a lot of comments on the version that is in the meeting packets. The reason there was an amended version sent later was because they wanted to try and resolve as many of the stakeholder comments as they could. The department wanted the Commission to have a document that met the Commissions' directive, but also something that the stakeholders were largely in agreement with.

Chairman Herrmann discussed the evaluation sheet in the second version. The uses listed don't fall under whole body contact recreation. They do fall under boating and canoeing, as the Commission desired to change it.

**Chairman Herrmann moved that the Commission direct staff to go back to the draft copy, which was included in the meeting packet of the agenda booklet, and utilize that which is titled "Recreational Use Attainability Analysis Guidance" in lieu of the version that was sent to the Commission as a supplement to the agenda booklet.**

**Commissioner Hauser added to take into account stakeholder comments but to not drop the fundamental Kansas structure.**

Chairman Herrmann stated that the Commission was not provided with stakeholder comments, which resulted in this change.

**Commissioner Hauser seconded the motion. Commissioners Hauser, Perry, Easley and Chairman Herrmann voted yes. Commissioner Kelly voted no. Commissioner Minton abstained.**

Chairman Herrmann directed Mr. Schroeder to provide the Commission copies of the stakeholder's comments.

Chairman Herrmann asked those with public comments to speak.

Mr. Robert Brundage, of Newman, Comley & Ruth, P.C., spoke regarding the UAA process. Mr. Brundage does not understand how the water quality standards are going to be proposed during the next year regarding secondary contact. At the last Commission meeting there was a vote to propose in the upcoming regulations, change in the definition of boating and canoeing to incorporate a secondary or incidental contact. When that's promulgated, if you look at the water quality standards and the list of all the classified streams, you have columns that you put check marks in for each beneficial use. Now there is going to be a new column there. What will be put in the column? Will it have check marks?

Chairman Herrmann stated there is already a column. For tables G and H there is already a column that says B2G.

Mr. Brundage replied when the definition for the beneficial use is changed, you have to decide where or whether that check mark belongs in that box. There has been discussions and lawsuits filed on trying to have everything under whole body contact, have that check mark in there where the beneficial use applies.

Mr. Brundage stated that he didn't understand when there is now a more clear or a new beneficial use for the secondary contact, what are they going to do with that check mark?

If there is going to be a check mark placed where that beneficial use applies, then he does support what he believes was Chairman Herrmann's motion that the UAA protocol include both primary and secondary whole body and/or recreational contact.

Mr. Brundage asked if the motion made a few minutes ago was a motion to go back to the previous version and not incorporate recent stakeholder comments, or was it just changing the whole body contact aspect of it to include the more general recreation which would include primary and secondary contact?

Chairman Herrmann responded the primary interest is to make a recreational analysis in lieu of merely whole body contact recreation. Further direction was given to provide the Commission with the stakeholder's comments to include in their evaluation.

Mr. Brundage commented that this process has taken some time. He hopes to have some type of UAA protocol approved by the Commission sooner than later. It's probably better to get something approved because it is pretty much like the Kansas approach and overall most would probably agree we are much better off than we were six months ago. He would like to get it approved now and continue to work on it.

Chairman Herrmann stated the process began in January 2003, which there was a UAA between the Department of Natural Resources, Agriculture and EPA about doing UAAs. There should be something in place. It is past the recreational period, but much of the information that is asked for in the UAA is historical documentation.

Mr. Hull added the discussion the department was having with the Department of Agriculture back in January 2003 was not related to a UAA protocol, but it was an agreement between the Department of Natural Resources and Agriculture for use by their partners to actually conduct UAAs. The protocol had not been developed at that time.

Mr. Hull asked the Commission to consider going back to the earlier document that is in the meeting packets, use the original title, and let staff use their best professional judgment in the next couple of weeks to try and address the stakeholder's comments to end up with a document that everyone can begin using. The results of that could lead to a point to decide if it's being used for whole body contact recreation or wading or boating etc. By the time it's to the final rulemaking stage, as far as the water quality standards' revisions go, decisions can be made on what column to put the check mark in. September is a bit late to get progress made.

Mr. Brundage mentioned that Chairman Herrmann had made a motion at the last meeting to change the definition of boating and canoeing. He suggests that it might be appropriate to change the title boating and canoeing of that secondary contact to incidental contact recreation or secondary recreation. You would think you would boat or canoe in a water body that is large enough to swim in.



Chairman Herrmann replied no. When you get into the body of the document, it defines whole body contact as being at least one meter deep. It defines the boating and canoeing or secondary recreation as being at least one foot deep.

Ms. Mary Lappin reported for the Kansas City Water Services Department. She expressed their appreciation of the Department of Natural Resources' staff and they have seen the second draft that was not included in the meeting packet. It appears that staff has been very responsive to stakeholder comments.

Ms. Lappin explained that they would like to see the process go forward, but they understand the Commission wanting to have adequate public notice of the latest draft before making a decision.

Chairman Herrmann responded that it was the Commission's intent to include in Table A 7.031, a bacteria component, which now stipulates only fecal coliform but is proposed to change to E-coli. Also to be included in Table A, a qualitative definition for both whole body contact and boating and canoeing, which is secondary contact.

Commissioner Minton pointed out since there wasn't an opportunity for many people to see the second draft titled "Whole Body Contact Recreational Use Attainability Analysis Guidance," how impracticable is it for stakeholders to get together for a quick meeting to analyze the document? He suggested after the stakeholders meet, the Commission have a conference call and give the department and the public an opportunity to address the issues and concerns they have and see if the process can continue at the September Commission meeting.

Mr. Hull stated if the department can do it without doing it by rule, they will.

Chairman Herrmann stated the department will get the Commissioners the written comments from stakeholders, the department will meet with the stakeholders, and have a conference call with the Commissioners.

Commissioner Minton requested the stakeholders who participate in the meeting have a copy of the second draft, and also for the conference call, that the stakeholders have the same copy as the Commissioners so they can see that their comments are accurately reflected in the document that will be voted on. Everyone who has contributed to this process should have a copy of what the Commission has for the conference call so everyone is on the same page.

Mohsen Dkhili provided a presentation to the Commission on the proposed UAA protocol.

#### Morningside Addition Enforcement Referral

Mr. Kevin Mohammadi, Chief of Compliance and Enforcement, Department of Natural Resources, reported Morningside Addition is a residential development owned by

Mr. Jarrett Archdekin located in St. Joseph, Missouri. The total area disturbed for this development is approximately 15 acres. The receiving stream for storm water discharges from the site is an unnamed tributary to Whitehead Creek (unclassified).

Department staff conducted inspections of the site on August 14, October 2, and December 9, 2003, April 15, and May 13, 2004, and observed the following conditions: land disturbance activities of more than one acre without a permit, Best Management Practices were minimally utilized, some sedimentation fencing was in place, however, it was not properly installed and was failing, storm water inlets were not protected to divert sediment from entering the inlets, the inlets and outfalls of the storm water retention ponds were not protected with rip-rap and were eroded, and sediment laden storm water was flowing offsite.

Mr. Archdekin was present during the August 14, 2003 inspection. Department staff informed him of the violations and verbally requested that he submit an application for a permit and bring the site into compliance with the Missouri Clean Water Law.

The department has issued Mr. Archdekin Notices of Violation (NOV) #2165KC on September 5, 2003; NOV #2152KC on January 14, 2004; and NOV #2228KC on May 21, 2004 for ongoing violations. Inspection reports were mailed to Mr. Archdekin respectively which requested that he respond in writing within 15 days stating the actions taken to correct the violations and that he submit an application for a permit. To date, the department has not received a response to its requests.

On December 9, 2003 and May 13, 2004, department staff collected samples of storm water discharging from the site during rainfall events. Analysis of the samples indicated 9.5 ml/L/hr and 9.0 ml/L/hr settleable solids respectively. Department staff observed that the water flowing off the site and entering the unnamed tributary to Whitehead Creek was extremely turbid.

Department staff took photographs of the site during each inspection supporting staff's observations.

On February 11, 2003, the matter was referred to the Compliance and Enforcement Section for appropriate enforcement action. Department staff telephoned Mr. Archdekin to discuss this matter and Mr. Archdekin stated that he felt that a permit would only give the department more strength to build a case against him. The department has sent Mr. Archdekin three (3) letters offering to settle the matter. To date, the department has not received a response from Mr. Archdekin regarding its offer.

Mr. Archdekin has failed to respond to the department's settlement offers to resolve ongoing violations of the Missouri Clean Water Law occurring at Mr. Archdekin's property. Therefore, the Water Protection Program staff are recommending referral of this matter to the Attorney General's Office for appropriate legal action to compel compliance and assess civil penalties.

**Commissioner Minton moved to forward the matter to the Attorney General's Office. Commissioner Perry seconded the motion. The motion passed unanimously, with all Commissioners voting.**

Montrose Generating Station Variance – Final Action

Mr. Richard Laux, of the Permits and Engineering Section, Department of Natural Resources, reported the Kansas City Power & Light Company has applied for a variance from 10 CSR 20-7.015 (3) (B). That section of the rules sets effluent limitations on certain lakes in Missouri. The company currently operates a domestic lagoon at the Montrose Generating Station in Henry County Missouri. The lagoon discharge eventually enters Montrose Lake, water of the state, through the plant's cooling water system.

Staff recommended preliminary approval with two conditions at the June 2, 2004 CWC meeting:

- The lagoon be replaced with an acceptable secondary treatment facility capable of meeting "lake effluent limitations" within two years.
- The discharge from the new facility be routed directly to the lake, or the discharge channel, not the intake channel.

The staff recommendation to preliminarily approve the variance request was accepted and the Commission voted to direct staff to public notice their intention to approve the variance with the conditions. There were no comments received, therefore, staff recommended the Commission take final action in accordance with the staff recommendation.

**Commissioner Minton made a motion to accept staff's recommendation on the Montrose Generating Station Variance. Commissioner Hauser seconded the motion. The motion passed unanimously, with all Commissioners voting.**

Eagle Woods Homeowners Assoc. Variance

Mr. Richard Laux reported the Eagle Woods Homeowners Association Variance was presented to the CWC at their June 2, 2004 CWC meeting. The Commission accepted staff's recommendation and voted to direct staff to public notice their intention to approve the variance with noted conditions. Two comments were received during the public notice period.

The department received a request from the applicant dated August 2, 2004 to defer any discussion or action on the variance until at least the September Commission meeting. There are some ongoing negotiations between Osage Water Company, and Missouri American Water Company about the transfer of assets, which would include the facility that currently serves Eagle Woods Subdivision.

Staff recommended the Commission defer any discussion or action on the variance application to the September meeting.

**Commissioner Hauser made a motion to defer to the September Commission meeting. Commissioner Easley seconded the motion. The motion passed unanimously, with all Commissioners voting.**

City of Parkville Variance

Mr. Richard Laux reported on June 4, 2004 the City of Parkville submitted an application for a variance requesting relief from the requirement to meet existing ammonia effluent limitations found at 10 CSR 20-7.031. The City is suggesting that the “1999 EPA ammonia criteria” be used in issuing their permit, although that criteria has yet to be formally proposed for use in Missouri.

Staff recommendation was to be made to the Commission for a denial of the request at the August meeting, however, the City of Parkville requested that the variance be continued until the September meeting in order for the City to review its options. The City was encouraged to apply for the variance by staff members and feels that the City and the Water Protection Program should discuss the denial recommendation before it is formally presented to the CWC. Staff are in agreement that further discussion is in order. Staff recommends deferral to the September meeting.

**Commissioner Hauser made a motion to defer to the September Commission meeting. Commissioner Kelly seconded the motion. The motion passed unanimously, with all Commissioners voting.**

**Commissioner Perry moved that the Clean Water Commission go into Closed Session to discuss legal, confidential, or privileged matters under Section 610.021 (1), RSMo; personnel actions under Section 610.021 (3), RSMo; personnel records or applications under Section 610.021 (13), RSMo or records under Section 610.021 (14), RSMo which are otherwise protected from disclosure by law. Commissioner Kelly seconded the motion and all Commissioners and Chairman Herrmann voted yes.**

**Chairman Herrmann entertained a motion to come out of closed session.**

**Commissioner Minton moved for the Clean Water Commission to come out of closed session and go back into open session. Commissioner Easley seconded the motion and all Commissioners and Chairman Herrmann voted yes.**

DRAFT Water Classification Guidance Document

Mr. John Ford, of the Water Quality Monitoring and Assessment Section, Department of Natural Resources, asked for the CWC’s approval of the water classification guidelines.

At a previous Commission meeting, the Commission requested staff to develop guidelines for determining whether or not specific waters should be included in the state's list of classified waters. Members of the Department of Natural Resource's Water Protection Program and Environmental Services Program drafted a set of guidelines and shared them with stakeholders. After reviewing the comments of the stakeholders, the department made some edits to the proposed guidelines and presented it to the Commission along with the recommendation to place the guidelines on public notice. The Commission concurred. The proposed guidelines were placed on public notice from January 29 to February 29, 2004. Three comment letters were received. As a result of the comment letters, some additional modification guidelines were made. The issues raised by stakeholders or those responding to public notice have not been totally resolved.

Discussion was held on P and C status of streams. Commissioner Minton asked what if the effluent only discharged periodically, and in between times the stream didn't have the flow and it went dry, would you call that an intermittent stream during that time frame? Mr. Ford replied there were no provisions made in the guidelines for determining permanency based upon an intermittent flow pattern from a point source discharge.

Commissioner Minton asked if there should be a provision in there to allow for the lack of permanency? Mr. Ford stated it is something staff could consider.

Commissioner Perry asked what if it's in a dry bed and it never leaves the landowner's property? Mr. Ford replied there are no provisions in the guidelines for determining whether or not it's wholly contained on any single person's property. It's strictly the size of the stream and the observation of whether or not there's flow. Commissioner Minton suggested there should be some criteria there for permanence or frequency of flow for discharge.

Commissioner Minton asked what is the staff's position if you can't obtain landowner permission to do a site inspection? Mr. Ford replied that is not resolved at this time. There would have to be further communication with the landowner to make them understand what the department is doing and the importance of it. Ms. Randles commented there is authority in the law for the department to inspect.

Mr. Hull asked Mr. Ford where do we go from here? Mr. Ford stated staff will go back and revisit some of the wording. Some alternative wording will be provided and staff will ask for acceptance at the September CWC meeting. After that, this will be the basic procedures that the department will follow. The first time that the dry period actually occurs will be the first time that people will be able to go out and start collecting the information on streams and sending it in to the department.

Mr. Robert Brundage commented that he has an issue with the guidelines for permanently flowing streams and effluent dominated streams. In some instances, an effluent dominated stream that can be 100% effluent is now afforded the same protection as a stream that is there naturally under effluent conditions. There are some serious policy

considerations that are taking effect. Mr. Brundage does not support it in its current form. He would like to see it resolved and better explained before the Commission adopts it.

Mr. John Ford commented that the guidelines don't represent a new policy. Many of the streams in the present classified stream network begin at the outfall of medium to large wastewater treatment plant discharges. There has been some recognition in the past that effluent dominated streams should be classified.

Mr. Scott Goodin, representing himself, reported he does not believe under current draft of the guidance that the proposed depth criteria, Section 8.1.1 and 8.1.2 is accurate. It says that if all 5 pools, the pools that are available to survey, if one of them does not reach a depth of one foot, that that entire reach is considered unable to meet the minimum criteria for a Class C stream. He is concerned about one single factor determining the fate of an entire reach. One single pool can disqualify an entire reach of stream from protection, which it would otherwise receive.

Mr. Goodin had spoke with some of the committee members who drafted the Water Classification Guidelines. He stated the committee members that he spoke with reevaluated their determination upon hearing public comments. The public comments were addressed by the committee chair and not by the committee as a whole. He would like to see that the following wording is considered by the committee for amendment to the draft: " This segment may or may not be considered able to meet the minimum criteria for Class C streams. Further review by the department would be required to make the final determination."

Mr. Goodin stated he believes that perhaps the definition of a dry period isn't as clear as it needs to be. The depth criteria needs to be revisited and examined for consistency and then amended to be more consistent with the department's practices and decisions of the Commission as they have been in the past.

Mr. Goodin stated the guidelines as drafted drew largely upon guidance that is present with the state of Ohio. The guidance available from Ohio sets their pool depth for classification in relation to our Class C, 33% deeper. Even that guidance says that a more detailed investigation is required for reaches, which have pools of lesser depth. The department's guidance should reflect that as well.

Mr. Ford said staff will make some suggested wording changes, per Commissioner Davis' suggestion, to include some information on minimum frequency that a discharge would have to occur before it would qualify as an effluent dominated stream.

Chairman Herrmann directed staff to include consideration of Mr. Brundage's and Mr. Goodin's comments and bring this issue back to the Commission in September.

#### City of Tracy

Mr. Kirby Finders, of the Financial Assistance Center, Department of Natural Resources, reported to the CWC on the City of Tracy. The City is located in Platte County, Missouri, with a population of 213. The City has been listed in both the FY04 and FY05 Intended Use Plans as a Clean Water State Revolving Fund (SRF) fundable project. The amount of proposed SRF financing is listed as \$355,100. The City had a total of 135.88 Priority Points.

The City of Tracy's proposed waste water project includes the replacement of an existing package plant, extension of the gravity sewer and new pump station with force main. Waste water will be conveyed under the Platte River to Platte City for treatment.

The City is requesting that the SRF amount be increased from the current \$355,100 to \$499,932. The total engineers' cost estimate for this project is approximately \$980,000. The remainder of the funding is to come from a Community Development Block Grant (estimated at \$465,000).

The reason for an increased need in funding is due to changes in the scope of the project. The currently planned project will provide sewers to an increased number of users (110). Also by consolidating the Community Development Block Grant loan into an SRF loan, the City will save on local costs of issuance and administrative fees.

The City passed a \$500,000 bond issue to cover this project on August 3, 2004. Staff recommends approval of the City of Tracy's request to increase SRF funding.

**Chairman Herrmann entertained a motion to increasing the City of Tracy's SRF amount to \$499,932. Commissioner Easley seconded the motion. The motion passed unanimously, with all Commissioners voting.**

#### Staff Updates

##### Wet Weather Stakeholders Workgroup Update

Mr. Peter Goode, Chief of Permits and Engineering, Department of Natural Resources, updated the CWC on the Wet Weather Stakeholders Workgroup.

The Wet Weather Stakeholders Workgroup has developed a proposed policy for applying water quality standards to wet weather conditions. The CWC's Chairman directed the workgroup to continue its work especially with respect to the high flow exemption that is contained in 10 CSR 20-7.031 Water Quality Standards. The workgroup has recommended that the High Flow Exemption for Whole Body Contact Recreation should be based on measurable and observable conditions that document when a stream is unsafe for recreational use. The bacteria water quality criterion would not apply during these high flow conditions. Parameters that should be considered for a high flow exemption include high velocity, a multiple or percentile of stream flow, "out-of-banks" conditions,

or the defined flood stage. A combination of these parameters may be appropriate to document an unsafe stream condition. This exemption would not apply to lakes.

The workgroup met on June 29, 2004 and agreed to focus in the short term on drafting the details of a high flow exemption. The workgroup agreed that the exemption should be site specific. A statewide exemption criteria would not be appropriate due the natural variation in stream characteristics and variation in designated uses. The workgroup is developing site specific criteria that would be used to determine if an exemption is appropriate.

#### Fiscal Year 2004 Proposals for 319 Grant Funding

Ms. Becky Shannon, Chief of Watershed Protection, Department of Natural Resources, updated the CWC on the competitive selection of projects for the FY 2004 319 Grant.

Section 319 of the Clean Water Act provides for development and funding of programs that address nonpoint sources of water pollution such as runoff from fields, lawns and parking lots. Funding is intended to support activities that help meet the goals of the state's Nonpoint Source Management Plan. The Department of Natural Resources' Water Protection Program administers the 319 program in Missouri, but works with its many resource partners to guide and implement the program.

A total of 24 proposals are being considered for the competitive grant funds, compared to last year's 22. If awarded, 319 applicants will use the funding to help address aspects of nonpoint source water pollution through education, demonstration, monitoring and/or implementation projects.

The FY 2004 process began with a Request for Proposals (RFP), which was sent on February 16, 2004 to potential applicants listed on the regularly updated mailing list. Electronic versions were sent to members of the Water Quality Coordinating Committee, advertised on the department's web site, provided to all Soil and Water Conservation Districts and to the Natural Resources Conservation Service. The RFP was announced at various conferences, meetings, events, and through press releases. Staff promotes the 319 grants to potential project sponsors throughout the year.

Optional pre-proposals describing the potential projects were requested by April 5, 2004. Pre-proposals were evaluated by staff and comments were provided to the sponsors along with offers for further assistance.

The staff conducted training for 319 proposal development on May 12, 2004. Complete grant applications were to be postmarked by July 1, 2004. The program allows submittals by fax or e-mail in order to meet the deadline, provided this is followed by a signed application.

Applications were then distributed to members of an inter-agency review team for review and evaluation. Each review team member has expertise specific to nonpoint source



water pollution. Agencies represented on the review team include: Missouri Departments of Health and Senior Services, Agriculture, Conservation, USEPA Region 7, USDA/Natural Resources Conservation Service, and the Missouri Department of Natural Resources' Water Pollution Control Branch, Public Drinking Water Branch, Soil and Water Conservation Program, and its Geological Survey and Resource Assessment Division.

Interviews and final ranking will take place on August 17 and 18, 2004. The applicants are invited to meet with the review team so that reviewers can ask questions and clarify any issues that may be unclear or questionable. Following the final interview, the overall ranking is calculated. Reviewers may offer comments or suggestions regarding the projects. Staff will address these comments in the subgrant negotiations if the project is selected for funding.

The list of projects, in priority order, will be provided to the CWC for approval at its September meeting prior to the department requesting funds from EPA. Project sponsors will be notified of the proposed action and will be invited to attend the Commission meeting.

Following action by the Commission, staff will develop a federal grant application requesting funds for the selected projects as well as funds for continued staffing, monitoring, etc. EPA staff have expressed concern about the timing of grant applications from the states, and Missouri is strongly encouraged to submit their FY 2004 application as soon as possible. Staff will complete as much of the grant application as possible prior to the September Commission meeting to facilitate this process.

#### Cape Girardeau County Storm Water Grant Update

Mr. J. D. Schuenemeyer, of the Financial Assistance Center, Department of Natural Resources, briefed the CWC on the status of the Storm Water Grant for Cape Girardeau County – CGCo-0428-03G - Hubble Creek Channel Stabilization, for the amount of \$90,967.

Staff wants to make the CWC aware that this grant is being administered by the U. S. Corps of Engineers (COE) and it should be noted that the COE is intending to make a direct construction contract award to a Small Business Enterprise. The direct award of the contract would be in conflict with the State Storm Water Regulations, 10 CSR 20-4.061, that requires formal advertising and contract award to the lowest responsive and responsible bidder.

An additional four FY04 Storm Water Grants to Cottlesville, Dardenne Prairie, City of O'Fallon and the County of St. Charles, involving the St. Charles County Dardenne Creek storm water master plan, are currently being administered by the COE in a similar fashion. The contracts for these particular projects will be awarded from the COE's list of "indefinite delivery order contracts." This list basically saves time by selecting a few contractors ahead of time through a fully advertised process, and uses the contractors for

multiple projects at a later time. This avoids having to go through the advertising and selection process for each and every contract they do.

However, a precedent has been set for awarding construction contracts in this manner by a previous Storm Water Grant variance request approved by the CWC. This precedent was set by a variance granted to St. Charles County's 2003 Storm Water Grant, StChCo-0359-02G, the L-15 Levee Damage Minimization Project, which is also administered by the COE.

Staff's question to the CWC is that since this precedent has been set by the aforementioned grant, will these current Storm Water Grant recipients need to apply for a variance from the Storm Water Grant and Loan Regulations?

Commissioner Minton stated there has to be a request for a variance from Cape Girardeau.

Mr. Schuenemeyer stated if the variance is not applied for or if it is applied for and denied, then the Cape Girardeau Soil and Water Conservation District will lose the state Storm Water Grant. The Corps has to have their money expended by September.

Mr. Hull reported the first order of determination is whether or not these grants are for planning or construction. If they are for construction, the entity will have to go through the variance process. It is not critical to have the variance filed by the CWC's September meeting. The concerned parties need to be notified that they need to apply for a variance and what that process is.

Mr. Glenn Chatman, from the Corps of Engineers, spoke about a project called "County Roads 228." There were two projects a couple of years back that were brought before the Commission by the Corps of Engineers. The Commission was briefed on the proposed acquisition strategy for those two projects. The acquisition strategy was to use the negotiated process. Mr. Chatman is proposing concurrence from the Commission for the Corps of Engineers' St. Louis District to use the negotiated process again for County Roads 228.

County Roads 228 falls under the 8A program. This is anything that is under \$3 million has to be a negotiated requirement. Anything over \$3 million has to be a competed 8A requirement. No other business can compete on those requirements unless it is an 8A contract. There are several contractors that Mr. Chatman can use on a negotiated basis for that particular requirement. There are quotas they have to meet in the federal government, and it's quicker and cheaper to go the negotiated route. They can do the negotiated process and get a better price.

Pebble Creek is another project coming up that is a state requirement. The Corps will probably ask for concurrence to use the 8A negotiated process for that project too.

## **Standing Items**

### Budget and Legislative Update

Mr. Jim Hull reminded the CWC that the program lost 2 FTE due to not being able to fill all of the positions that were vacated due to retirements. They also lost the FTEs for 401 staff due to budget reductions. The program is still doing that work but paying for it out of a different source. This fiscal year there were additional reductions in staff, about five FTEs, they were paid out of general revenue. One of those did Letters of Approval for small animal feeding operations. The remainder of those staff did rural water sewer grants and storm water grants.

The Office of Administration is discussing with the department the possibility of selling more bonds to generate money for storm water grants and loans, and rural water sewer grants and loans. If those bonds are sold, the department will need some of those positions back to do that work again. That expansion request has been submitted for the FY06 budget process.

Other expansions the program is asking for in next year's budget is to add SRF inspectors in the regional offices. They will inspect facilities that are being constructed using SRF loans or facilities that have previously been constructed with SRF funds. If that is approved, those staff will free up existing staff who can work on permits, as there is some backlog there. The program is also asking for an expansion of staff to do land disturbance inspections around the state. There is not adequate staff statewide to make sure all land disturbance activities are permitted and in compliance. EPA Region VII has been assisting with the inspections.

The program is asking for an additional FTE to assist with Water Quality Review Sheets. They lost their FTE for doing Letters of Approval for small animal feeding operations, and are asking for an FTE back as there is still a need for it. There is also a request for an expansion for staff to do UAAs.

Mr. Hull talked about legislation and several bills that impact the department. House Bill 980 was passed by the legislature and signed by the Governor. This adds the requirement of the Regulatory Impact Report by law. House Bill 1433 was passed by the legislature and signed by the Governor. It allows the creation of an Upper White River Watershed Improvement District in Southern Missouri. Senate Bill 901 was passed and transfers responsibility to regulate underground storage tanks from the CWC to the Hazardous Waste Commission. Senate Bill 1020 was passed by the legislature and signed into law. It revises the requirements of the Sunshine Law. House Bill 1177 was passed by the legislature but was vetoed by the Governor. It contained changes related to the Concentrated Animal Feeding Operations law. Since it was vetoed the department will be having discussions with stakeholders related to changes to the department's CAFO regulations to bring them into conformance with federal CAFO requirements.

#### Public Comment and Correspondence

Mr. Larry Levin, with The Trust for Public Land, discussed a method for protecting watershed lands utilizing a portion of the SRF. Ohio, Oregon and Iowa have created methods to address non-point source protection through easements, acquisition, and restoration under SRF. He met with the Department of Natural Resources' staff and presented them with materials. He suggested adoption of such a program in Missouri. Mr. Levin left some materials with the Commissioners.

Mr. Steve Jeffery, with Thompson and Coburn, addressed the Commission on behalf of the St. Louis RCGA. Mr. Jeffery is on their Board of Directors, serving as the vice-chair for the environment. Mr. Jeffery requested that the Commission propose and adopt a rule dealing with a bioremediation permit by rule.

Mr. Jeffery explained that RCGA convened a workgroup to consider this issue. They developed a consensus draft permit by rule, which would authorize the use of a microbiological agent injection without the necessity of going through a six, nine, or twelve month process to obtain an Underground Injection Control (UIC) Permit from the department.

Mr. Jeffery appeared before the CWC last summer in Columbia. In August 2003, he formally submitted to Chairman Herrmann a copy of the draft proposed rule. He found out that a Memorandum of Agreement (MOA) was going to be executed between the Hazardous Waste Program's Voluntary Cleanup Program (VCP) and Water Protection Program. On a short term basis, the Water Protection Program is delegating authority to VCP to authorize the use of this remediation technology at the sites without the necessity of the requestor going through the UIC process. Since it is only a MOA between two programs, they still believe that the Commission should proposed and adopt this consensus permit by rule, which will authorize the use of this technology.

Mr. Tim Hippensteel, with Environmental Operations, Inc., was a member of the RCGA workgroup Mr. Jeffery mentioned. Mr. Hippensteel has experience in obtaining UIC permits to inject agents, which enhance naturally occurring biological degradation of contaminants in the ground water. The permits are lengthy to get, and there are high annual permit fees. Obtaining closure on the permits will be lengthy that will far exceed clean closure of the site like the VCP.

Mr. Hippensteel encouraged the Commission to move ahead with the recommended process.

#### Other

Mr. Jim Hull reported to the Commission on the Department of Natural Resources' Commission Operating Procedures. The department had put together a core workgroup to address concerns of the operation of the department's different Commissions. They wanted to make sure that all the Commissions do things consistently in following

procedures. Each Commission is requested by the core workgroup and the department to evaluate the report and adopt it for each Commission.

A draft was prepared for the CWC on their operating procedures. Mr. Hull asked the CWC to look at it and be prepared to discuss it at the September meeting. If the CWC has any changes, those changes can be forward to Mr. Hull or Ms. Marlene Kirchner.

Commissioner Perry requested to staff that on the agenda in the future, that the agenda items indicate if they are for review, for action to be taken or informational purposes.

Mr. Hull discussed the September 22, 2004 CWC meeting in Kansas City. He was contacted by the Kansas City Chamber of Commerce. They are planning a Commissioner reception the evening of the 29<sup>th</sup>. The Chamber asked if the CWC would be receptive to moving the CWC meeting from the 22<sup>nd</sup> to the 29<sup>th</sup> or 30<sup>th</sup>.

**Chairman Herrmann directed staff to reschedule the CWC meeting to the 29<sup>th</sup>.**  
Ms. Kirchner will inform the Commission of the meeting place when it is determined.

Respectfully submitted,

Jim Hull  
Director of Staff